

McGUIREWOODS

Jtroup@mcguirewoods.com
Direct Dial: 202-857-1702

September 22, 2003

Filed via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Attention: Darryl Cooper
Wireline Competition Bureau

Re: Notice of Ex Parte Communication
CC Docket No. 96-128
Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996

Dear Ms. Dortch:

This letter is submitted to respond to questions asked by Mr. Darryl Cooper of the Wireline Competition Bureau on September 15, 2003. This response is made by CommuniGroup of K.C., Inc., d/b/a CGI, et al. (the joint switch-based resellers or "Joint SBRs").¹

Mr. Cooper asked that the Joint SBRs provide an estimate of the following:

- (1) the time it would take for the Joint SBRs to convert to an SBR-pays compensation system (measuring from when the FCC announces a rule change) and
- (2) the time it would take for the Joint SBRs to have a third-party complete a verification of the adequacy of the SBRs' systems for tracking calls and calculating compensation.

¹

The Joint SBRs are as follows:

CommuniGroup of K.C., Inc., d/b/a CGI
CommuniGroup of Jackson, Inc.
NTS Communications, Inc.

VarTec Telecom, Inc.
Transtel Communications, Inc.
CenturtyTel Long Distance, LLC

As to the first question, amongst the Joint SBRs submitting this ex parte letter, several would be able to implement an SBR-pays system immediately. The other Joint SBRs would be able to convert to such a system within the predicted transition period of 120 to 150 days.

As for the second question, the Joint SBRs do not support the use of third-party verification of SBR-pays compensation systems. Implementation of verification would be overly burdensome on the Joint SBRs and would have an adverse impact on their limited resources. There are numerous payphone service providers ("PSP") that could potentially inundate SBRs with requests for verification, placing excessive demands on the personnel and financial resources of SBRs. Due to the extensive price competition in the long distance telecommunications market, the high costs of complying with verifications would not be recoverable from the SBRs' ratepayers. Furthermore, verification would require complex rules and regulatory oversight by the Commission, which is inconsistent with the deregulatory environment for competitive carriers such as SBRs.

As noted in the Joint SBRs' September 12, 2003, ex parte letter, any third party verification regulation would require complex procedures and processes designed to achieve the following: limiting verification to any good-faith disputes; preserving the confidentiality of the carrier's business records; designing a reasonable sampling methodology; a payment system that fairly assigns the costs of third-party verification; and, safeguards that prevent duplicative and/or serial verification procedures. The clear need for many complex procedures should third-party verifications be implemented counsels against its implementation.

The Joint SBRs recommend that an SBR-pays compensation system be adopted, but if the Commission maintains a system in which the SBRs pay the first facilities-based interexchange carrier ("FIXC"), there are several issues that the Commission should address. First, the risk of double payment liability must be alleviated. The Commission should clarify that under an FIXC-pays system, the PSP must proceed against the FIXC and can not proceed against an SBR. Without such a clarification the SBRs may be exposed to double liability if they pay the FIXC and then are sued by the PSPs, when the FIXC fails to forward those payments to the PSPs.

Second, under a FIXC-pays system the FIXCs and PSPs must be forbidden from charging the SBRs for uncompleted calls. Charging for uncompleted calls violates the statutory requirement that PSPs be compensated only for "completed" calls. 47 U.S.C. § 276.

Third, the Commission should prevent FIXCs from imposing excessive "administrative" surcharges on the SBRs. At the very least the Commission should cap FIXC administrative surcharges to the SBRs at the current 2 cent per call industry standard or, alternatively, require the FIXCs to recover their administrative costs through their rates for long distance service.

The Joint SBRs encourage the Commission to consider the merits of an SBR-pays compensation system, one that some of the Joint SBRs could implement immediately and the rest could implement within the expected transition period. Should an SBR-pays compensation system be adopted, a third-party verification requirement is not recommended due to the excessive burdens it would place on the Joint SBRs and the complex regulation that would be required. Finally, in deciding on which payphone compensation system is adopted, the Joint SBRs urge the Commission to take action that 1) ensures that the Joint SBRs are not exposed to the risk of paying twice for the same payphone call, 2) prohibits the FIXCs or PSPs from

September 22, 2003

Page 3

charging SBRs for uncompleted calls, and 3) prevents FIXCs from imposing unreasonable administrative charges on SBRs.

Respectfully submitted,

CommuniGroup of K.C., Inc., d/b/a CGI
CommuniGroup of Jackson, Inc.
NTS Communications, Inc.

VarTec Telecom, Inc.
Transtel Communications, Inc.
CenturyTel Long Distance, LLC

By their attorneys

/s/ James U. Troup
James U. Troup
Adrian B. Copiz
McGuireWoods LLP

Cc: Gregory M. Cooke
Darryl Cooper
Henry L. Thaggert, III
Jack Yachbes